

Union Calendar No. 190

106<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 1875**

[Report No. 106-320]

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## **A BILL**

To amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions.

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SEPTEMBER 14, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed



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## IN THE HOUSE OF REPRESENTATIVES

MAY 19, 1999

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. BRYANT, Mr. MORAN of Virginia, Mr. DELAY, Mr. ARMEY, Mr. HYDE, Mr. SENSENBRENNER, Mr. MCCOLLUM, Mr. GEKAS, Mr. SMITH of Texas, Mr. GALLEGLY, Mr. CANADY of Florida, Mr. CHABOT, Mr. BARR of Georgia, Mr. HUTCHINSON, Mr. CANNON, Mr. ROGAN, Mrs. BONO, Mr. BLILEY, Mr. COX, Mr. CRAMER, Mr. DREIER, Mr. GOODE, Mr. HOLDEN, Mr. JOHN, Mrs. JOHNSON of Connecticut, Mr. LINDER, Mr. OXLEY, Mr. STENHOLM, Mr. SUNUNU, and Mr. UPTON) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 14, 1999

Additional sponsors: Mr. GARY MILLER of California, Mr. GOSS, Mr. BARTLETT of Maryland, Mrs. BIGGERT, Mr. DAVIS of Virginia, and Mr. BACHUS

SEPTEMBER 14, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 19, 1999]

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## A BILL

To amend title 28, United States Code, to allow the applica-

tion of the principles of Federal diversity jurisdiction to interstate class actions.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND REFERENCE.**

4       (a) *SHORT TITLE.*—*This Act may be cited as the*  
5 *“Interstate Class Action Jurisdiction Act of 1999”.*

6       (b) *REFERENCE.*—*Whenever in this Act reference is*  
7 *made to an amendment to, or repeal of, a section or other*  
8 *provision, the reference shall be considered to be made to*  
9 *a section or other provision of title 28, United States Code.*

10 **SEC. 2. FINDINGS.**

11       *The Congress finds that—*

12           (1) *as recently noted by the United States Court*  
13 *of Appeals for the Third Circuit, interstate class ac-*  
14 *tions are “the paradigm for Federal diversity juris-*  
15 *isdiction because, in a constitutional sense, they impli-*  
16 *cate interstate commerce, invite discrimination by a*  
17 *local State, and tend to attract bias against business*  
18 *enterprises”;*

19           (2) *most such cases, however, fall outside the*  
20 *scope of current Federal diversity jurisdiction stat-*  
21 *utes;*

22           (3) *that exclusion is an unintended technicality,*  
23 *inasmuch as those statutes were enacted by Congress*  
24 *before the rise of the modern class action and therefore*

1       *without recognition that interstate class actions typi-*  
2       *cally are substantial controversies of the type for*  
3       *which diversity jurisdiction was designed;*

4             (4) *Congress is constitutionally empowered to*  
5       *amend the current Federal diversity jurisdiction stat-*  
6       *utes to permit most interstate class actions to be*  
7       *brought in or removed to Federal district courts; and*

8             (5) *in order to ensure that interstate class ac-*  
9       *tions are adjudicated in a fair, consistent, and effi-*  
10       *cient manner and to correct the unintended, technical*  
11       *exclusion of such cases from the scope of Federal di-*  
12       *versity jurisdiction, it is appropriate for Congress to*  
13       *amend the Federal diversity jurisdiction and related*  
14       *statutes to allow more interstate class actions to be*  
15       *brought in or removed to Federal court.*

16 **SEC. 3. JURISDICTION OF DISTRICT COURTS.**

17       (a) *EXPANSION OF FEDERAL JURISDICTION.*—Section  
18       1332 is amended by redesignating subsections (b), (c), and  
19       (d) as subsections (c), (d), and (e), respectively, and by in-  
20       serting after subsection (a) the following:

21             “(b)(1) *The district courts shall have original jurisdic-*  
22       *tion of any civil action which is brought as a class action*  
23       *and in which—*

24             “(A) *any member of a proposed plaintiff class is*  
25       *a citizen of a State different from any defendant;*

1           “(B) any member of a proposed plaintiff class is  
2           a foreign state and any defendant is a citizen of a  
3           State; or

4           “(C) any member of a proposed plaintiff class is  
5           a citizen of a State and any defendant is a citizen  
6           or subject of a foreign state.

7           As used in this paragraph, the term ‘foreign state’ has the  
8           meaning given that term in section 1603(a).

9           “(2)(A) The district courts shall not exercise jurisdic-  
10          tion over a civil action described in paragraph (1) if the  
11          action is—

12                 “(i) an intrastate case,

13                 “(ii) a limited scope case, or

14                 “(iii) a State action case.

15          “(B) For purposes of subparagraph (A)—

16                 “(i) the term ‘intrastate case’ means a class ac-  
17          tion in which the record indicates that—

18                         “(I) the claims asserted therein will be gov-  
19                         erned primarily by the laws of the State in  
20                         which the action was originally filed; and

21                         “(II) the substantial majority of the mem-  
22                         bers of all proposed plaintiff classes, and the pri-  
23                         mary defendants, are citizens of the State in  
24                         which the action was originally filed;

1           “(ii) the term ‘limited scope case’ means a class  
2           action in which the record indicates that all matters  
3           in controversy asserted by all members of all proposed  
4           plaintiff classes do not in the aggregate exceed the  
5           sum or value of \$1,000,000, exclusive of interest and  
6           costs, or a class action in which the number of mem-  
7           bers of all proposed plaintiff classes in the aggregate  
8           is less than 100; and

9           “(iii) the term ‘State action case’ means a class  
10          action in which the primary defendants are States,  
11          State officials, or other governmental entities against  
12          whom the district court may be foreclosed from order-  
13          ing relief.

14          “(3) Paragraph (1) shall not apply to any claim con-  
15          cerning a covered security as that term is defined in section  
16          16(f)(3) of the Securities Act of 1933 and section  
17          28(f)(5)(E) of the Securities Exchange Act of 1934.

18          “(4) Paragraph (1) shall not apply to any class action  
19          solely involving a claim that relates to—

20                 “(A) the internal affairs or governance of a cor-  
21                 poration or other form of business enterprise and that  
22                 arises under or by virtue of the laws of the State in  
23                 which such corporation or business enterprise is in-  
24                 corporated or organized; or

1           “(B) *the rights, duties (including fiduciary du-*  
2           *ties), and obligations relating to or created by or pur-*  
3           *suant to any security (as defined under section*  
4           *2(a)(1) of the Securities Act of 1933 and the regula-*  
5           *tions issued thereunder).”.*

6           (b) *CONFORMING AMENDMENT.*—Section 1332(c) (as  
7           *redesignated by this section) is amended by inserting after*  
8           *“Federal courts” the following: “pursuant to subsection (a)*  
9           *of this section”.*

10          (c) *DETERMINATION OF DIVERSITY.*—Section 1332, as  
11           *amended by this section, is further amended by adding at*  
12           *the end the following:*

13           “(f) *For purposes of subsection (b), a member of a pro-*  
14           *posed class shall be deemed to be a citizen of a State dif-*  
15           *ferent from a defendant corporation only if that member*  
16           *is a citizen of a State different from all States of which*  
17           *the defendant corporation is deemed a citizen.”.*

18       **SEC. 4. REMOVAL OF CLASS ACTIONS.**

19           (a) *IN GENERAL.*—Chapter 89 is amended by adding  
20           *after section 1452 the following:*

21       **“§ 1453. Removal of class actions**

22           “(a) *IN GENERAL.*—A class action may be removed to  
23           *a district court of the United States in accordance with this*  
24           *chapter, but without regard to whether any defendant is*

1 *a citizen of the State in which the action is brought, except*  
2 *that such action may be removed—*

3           “(1) *by any defendant without the consent of all*  
4 *defendants; or*

5           “(2) *by any plaintiff class member who is not a*  
6 *named or representative class member of the action*  
7 *for which removal is sought, without the consent of all*  
8 *members of such class.*

9           “(b) *WHEN REMOVABLE.—This section shall apply to*  
10 *any class action before or after the entry of any order certi-*  
11 *fying a class.*

12           “(c) *PROCEDURE FOR REMOVAL.—The provisions of*  
13 *section 1446(a) relating to a defendant removing a case*  
14 *shall apply to a plaintiff removing a case under this sec-*  
15 *tion. With respect to the application of subsection (b) of*  
16 *such section, the requirement relating to the 30-day filing*  
17 *period shall be met if a plaintiff class member who is not*  
18 *a named or representative class member of the action for*  
19 *which removal is sought files notice of removal no later than*  
20 *30 days after receipt by such class member, through service*  
21 *or otherwise, of the initial written notice of the class action*  
22 *provided at the court’s direction.*

23           “(d) *EXCEPTIONS.—*

24           “(1) *COVERED SECURITIES.—This section shall*  
25 *not apply to any claim concerning a covered security*

1        *as that term is defined in section 16(f)(3) of the Secu-*  
 2        *rities Act of 1933 and section 28(f)(5)(E) of the Secu-*  
 3        *rities Exchange Act of 1934.*

4            *“(2) INTERNAL GOVERNANCE OF BUSINESS ENTI-*  
 5        *TIES.—This section shall not apply to any class ac-*  
 6        *tion solely involving a claim that relates to—*

7            *“(A) the internal affairs or governance of a*  
 8        *corporation or other form of business enterprise*  
 9        *and that arises under or by virtue of the laws of*  
 10       *the State in which such corporation or business*  
 11       *enterprise is incorporated or organized; or*

12           *“(B) the rights, duties (including fiduciary*  
 13        *duties), and obligations relating to or created by*  
 14        *or pursuant to any security (as defined under*  
 15        *section 2(a)(1) of the Securities Act of 1933 and*  
 16        *the regulations issued thereunder).”.*

17        *(b) REMOVAL LIMITATIONS.—Section 1446(b) is*  
 18        *amended in the second sentence—*

19           *(1) by inserting “, by exercising due diligence,”*  
 20        *after “ascertained”; and*

21           *(2) by inserting “(a)” after “section 1332”.*

22        *(c) TECHNICAL AND CONFORMING AMENDMENTS.—The*  
 23        *table of sections for chapter 89 is amended by adding after*  
 24        *the item relating to section 1452 the following:*

*“1453. Removal of class actions.”.*

1           (d) *APPLICATION OF SUBSTANTIVE STATE LAW.*—  
2 *Nothing in this section or the amendments made by this*  
3 *section shall alter the substantive law applicable to an ac-*  
4 *tion to which the amendments made by section 3 of this*  
5 *Act apply.*

6           (e) *PROCEDURE AFTER REMOVAL.*—*Section 1447 is*  
7 *amended by adding at the end the following new subsection:*

8           “(f) *If, after removal, the court determines that no as-*  
9 *pect of an action that is subject to its jurisdiction solely*  
10 *under the provisions of section 1332(b) may be maintained*  
11 *as a class action under Rule 23 of the Federal Rules of*  
12 *Civil Procedure, it shall dismiss the action. An action dis-*  
13 *missed pursuant to this subsection may be amended and*  
14 *filed again in a State court, but any such refiled action*  
15 *may be removed again if it is an action of which the district*  
16 *courts of the United States have original jurisdiction. In*  
17 *any action that is dismissed pursuant to this subsection*  
18 *and that is refiled by any of the named plaintiffs therein*  
19 *in the same State court venue in which the dismissed action*  
20 *was originally filed, the limitations periods on all re-*  
21 *asserted claims shall be deemed tolled for the period during*  
22 *which the dismissed class action was pending. The limita-*  
23 *tions periods on any claims that were asserted in a class*  
24 *action dismissed pursuant to this subsection that are subse-*  
25 *quently asserted in an individual action shall be deemed*

1 *tolled for the period during which the dismissed class action*  
2 *was pending.”.*

3 **SEC. 5. APPLICABILITY.**

4 *The amendments made by this Act shall apply to any*  
5 *action commenced on or after the date of the enactment of*  
6 *this Act.*

7 **SEC. 6. GAO STUDY.**

8 *The Comptroller General of the United States shall, by*  
9 *not later than 1 year after the date of the enactment of this*  
10 *Act, conduct a study of the impact of the amendments made*  
11 *by this Act on the workload of the Federal courts and report*  
12 *to the Congress on the results of the study.*